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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-280

THOMAS G. S. CHRISTENSEN, NEW YORK TYPOGRAPHICAL UNION NO. 6, ET AL., *Petitioners,*

v.

NEW YORK TIMES COMPANY, ET AL., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The petitioners respectfully request that a writ of certiorari issue to review the judgment and opinion entered in this proceeding on May 15, 1973, by the United States Court of Appeals for the Second Circuit. The petitioners making that request are Thomas G. S. Christensen, New York Typographical Union No. 6, Bertram A. Powers and David W. Crockett.[1] The

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[1] Bertram A. Powers and David W. Crockett, petitioners herein, are Union Trustees of the Typo-Publishers Outside Tape Fund.

respondents herein are the New York Times Company, the New York Post Corporation, John Bogart and Leonard Arnold.[2]

OPINIONS BELOW

The opinion of the Second Circuit, rendered on May 15, 1973, is reported at 83 LRRM 2410. It is reprinted in the Appendix hereto, p. 1a, *infra.*

The opinion of the District Court for the Southern District of New York (Tyler, J.), rendered on June 26, 1972, is reported at 344 F.Supp. 194 and is reprinted in the Appendix hereto, p. 7a, *infra.*

JURISDICTION

The various petitioners appealed from a judgment of the Southern District, rendered on June 26, 1972, that had denied a petition for a declaratory judgment that certain payments from a jointly administered Typo-Publishers Outside Tape Fund would not violate §302 of the Labor Management Relations Act of 1947, 29 U.S.C. §186. On May 15, 1973, the Second Circuit entered its judgment and opinion affirming the Southern District's judgment. Senior Judge Wyzanski, sitting by designation, dissented from the Second Circuit's per curiam affirmance. No petition for rehearing was filed. This petition for writ of certiorari has been filed within 90 days from the entry of the Second Circuit's judgment.

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

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[2] John Bogart and Leonard Arnold, respondents herein, are Employer Trustees of the Typo-Publishers Outside Tape Fund.

QUESTION PRESENTED

Does §302(c) (5) of the Labor Management Relations Act, permitting an employer to contribute to a jointly administered industry trust fund "for the sole and exclusive benefit of the employees of such employer," apply to or prohibit the distribution of benefits from such a fund to all employees in a common labor pool, covered by similar collective bargaining agreements, who are adversely affected by the installation of automated equipment but whose employer may not have installed such equipment and hence may not have contributed to the trust fund?

STATUTORY PROVISIONS INVOLVED

Section 302 of the Labor Management Relations Act of 1947, 29 U.S.C. §186:

> (a) It shall be unlawful for any employer . . . to pay, . . . or agree to pay . . . any money or other thing of value—
>
> (1) to any representative of any of his employees who are employed in an industry affecting commerce;
>
> * * * * *
>
> (c) The provisions of this section shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): . . .

STATEMENT OF THE CASE

A. Proceedings Below

The petitioner Thomas G. S. Christensen was the sole arbitrator of a dispute as to whether a proposed plan of benefits under the Typo-Publishers Outside Tape Fund, whereby benefits would be payable to employees both of contributing employers and of non-contributing employers, was consistent with the underlying collective bargaining agreements and the trust agreement. Having found that these agreements did permit such a plan, the arbitrator proceeded, as directed by the arbitration agreement, to petition the United States District Court for the Southern District of New York for a declaratory judgment as to the legality of such a benefit plan under §302 of the Labor Management Relations Act. All other petitioners and respondents herein were parties to that declaratory judgment proceeding.

The District Court interpreted §302 so as to preclude the use of the assets of such a trust fund to benefit union members who are or were employees of non-contributing employers having collective bargaining agreements with the same union. The arbitrator's petition was accordingly denied. See Appendix hereto, pp. 7a-13a, *infra*. The Second Circuit affirmed by a divided vote, Senior Judge Wyzanski dissenting. See Appendix hereto, pp. 1a-6a, *infra*.

B. Creation of Industry-wide Automation Fund

The facts leading to the arbitration and the declaratory judgment action are not controverted. During the 1960's, various newspapers in the New York City area negotiated agreements with the petitioner New York Typographical Union No. 6 that authorized the news-

papers to use tape (called "outside tape"), received over the wires of the AP and UPI, so as to automatically set in type the voluminous stock market tables. The use of such outside tape eliminated the need to have employees in the composing room set the stock market tables by hand or by machine.

Substantial savings obviously accrued to those newspaper publishers that installed the outside tape equipment. And they agreed to pass along some of those savings to the union members in the New York City area as reimbursement for any economic injury suffered as a result of such automation. Thus, utilizing an agreed-upon formula, the users of the equipment obligated themselves to make payments to a trust fund, to be jointly administered by the union and the publishers in accordance with the requirements of the Labor Management Relations Act. The funds so accumulated were to be used generally for "retraining programs, supplemental unemployment benefits . . . and incentive retirement benefits." App. 81a-82a.

Thereafter, a jointly administered trust was established pursuant to §302(c) of the Act. Initially there were separate trusts for each contributing newspaper, but in 1967 these were merged into a single trust known as the Typo-Publishers Outside Tape Fund. Contributions were made to that trust fund by publishers using outside tape, which presently include only the New York Times and the New York Post.[3]

Article 3 of the trust instrument establishing the single Outside Tape Fund provided, *inter alia,* that

[3] Payments were made by the New York Herald Tribune and the New York World-Journal-Telegram until their demise. Their contributions are now a part of the Typo-Publishers Outside Tape Fund assets.

in the event that the union consented to the installation of automatic typesetting equipment and in the event "that employees are subject to lay-off, involuntary reassignment, reduction in pay, inability to obtain employment or other adverse consequences as a result of such installation, or in the event that . . . there is systematic and chronic unemployment in the newspaper industry," App. 36a-37a, the Trustees

> ". . . shall make distributions out of the fund to provide for and maintain a system of supplemental unemployment and involuntary reassignment benefits in order to lessen and alleviate the impact of such installation of automatic typesetting equipment or such systematic and chronic unemployment on employees adversely affected thereby." App. 37a.

But the trust instrument provided for no plan of benefits, leaving it to the Trustees to determine when necessary the "amounts, conditions and eligibility requirements of such benefits." App. 37a.

C. Disagreement on Proposed Benefit Plan.

In 1971 the Union Trustees proposed that a plan of benefits be established, a proposal that led to the arbitration and the declaratory judgment action. Under that proposal, which was opposed by the Employer Trustees, the trust assets would be used to pay benefits to beneficiaries having employee status not only with the present contributing publishers (the New York Times and the New York Post) but also the employees of any other publisher "in the newspaper industry who is a signatory to a collective bargaining agreement with New York Typographical

Union No. 6." App. 21a. In other words, benefits would be payable to employees of all newspaper publishers having contracts with the union, whether or not those publishers had ever contributed to the Typo-Publishers Outside Tape Fund.[4]

The Employer Trustees, who represented the New York Times and the New York Post, opposed this suggested plan of benefits on the grounds that, under their collective bargaining agreements, the trust agreement and §302 of the Act, the publishers' contributions to the Outside Tape Fund could be utilized only for the benefit of past or present employees of the contributing publishers. In accordance with the trust agreement, this dispute was submitted to arbitration, but only with respect to the consistency of the proposal with the collective bargaining agreements and the trust agreement. The arbitrator, the petitioner Thomas G. S. Christensen, ruled that both the collective bargaining agreements and the trust agreement authorized a plan of benefits covering past and present employees of contributing and non-contributing employers.

D. Findings of a Common Pool of Employees

In accordance with the arbitration agreement, the arbitrator then petitioned the District Court below, on behalf of all parties, for a declaration that the proposed plan was also legal in light of §302 of the Act. App. 5a-12a. Attached to the petition was an affidavit by the arbitrator giving the history of the dispute and

[4] The other major newspaper publishers having collective bargaining agreements with Typographical Union No. 6 are the New York News, Inc., and the Long Island Daily Press Publishing Co., Inc. Neither of those newspapers has utilized outside tape. Hence, neither has made contributions to the Outside Tape Fund.

a summary of the arbitration award. App. 13a-19a. Included in that affidavit was a paragraph (No. 14) that epitomized the arbitrator's determination in his award that the New York City newspaper employees constituted a single work force, making it appropriate to extend benefits to all such employees regardless of the contributing or non-contributing nature of their particular employer.[5] That paragraph read:

> "14. I concluded that in making my determination the collective bargaining history in the industry, not only for the 1970 Agreements but commencing from 1963 when the question of the use of tape became important was relevant.

---

[5] In concluding that the collective bargaining agreements authorized the payment of benefits to employees whose employers do not and have not contributed to the Outside Tape Fund, the arbitrator stated as follows in his award (App. 62a-63a):

"I reach that conclusion on the following basis. First, while the structure and machinery of collective bargaining between the Union and publishers in the New York City metropolitan area has varied widely in the last decade, it subsumes the concept of one industry, albeit with employer participants with sometimes differing problems and interest and contractual agreements. Whether the contracts between the Union and the publishers in that area have been "industry-wide" or individual, they evidence far more of a concept of a single work force, recognized by uniform contractual terms and conditions of employment, than separate, individual employer pools of labor. It is patent that the skilled employees represented by the Union constitute in its mind, in the minds of its members and in the posture of the publishers a homogenous group desirous of and frequently receiving common protections, benefits and conditions of employment despite individual publishers at various times."

Similarly, the award found that "The Outside Tape Fund was created and has been continued as an entity despite the changing character of the underlying negotiations and collective agreements. Its history, in sum, is one reflecting industry conditions rather than being specifically and explicitly related to any one or several publishers under separate contractual accords." App. 70a.

> Also relevant was the fact that by long tradition and under the terms of the collective bargaining agreements negotiated by the Union and the New York Newspaper Industry, there is considerable interchange between the newspapers by composing room employees represented by the Union. An employee terminated by one such employer has, under this tradition and these agreements, the absolute right to seek work at any other newspaper and when work is available to fill such positions on a priority basis ahead of all subsequent applicants for work." App. 16a.

No challenge was made to the affidavit filed in the court by the president of Typographical Union No. 6, an affidavit that confirmed the arbitrator's determination that the unemployment and other ill effects resulting from automation is not confined to the employees of contributing publishers but radiates out to all newspaper publishers' employees in the New York City area. App. 93a-97a. As summarized in the opinion of the District Court below (see Appendix hereto, pp. 11a-12a, *infra*), in this affidavit:

> "Mr. Powers has stated therein that all typographical workers are divided into two employment categories according to their seniority. Those workers enjoying the greatest seniority are termed 'situation holders.' Situation holders are employed by newspaper publishers on a permanent full-time basis. Typesetters with less seniority are 'substitutes.' In order to obtain employment, substitutes place their names on a 'slip board' at the newspapers at which they de-

sire employment. As positions become available due to illness of situation holders or to expanded newspaper editions, substitutes are called in to work at the paper at which they have 'slipped up.' Upon retirement of a situation holder, the most senior substitute on the slip board at that time is offered a permanent situation."

And one of the significant paragraphs in the affidavit itself stated:

> "In a real sense, the printers on the New York newspapers constitute a single pool of labor, for example, if all available substitutes at the New York Times have been hired, and additional help is needed, the chapel chairman (union steward) will call other newspapers to learn if there are available substitutes who have not been hired; if there are, they will be asked to fill in at the Times. Similarly, when in 1971 Fairchild Publications announced that it would go out of business, New York Typographical Union, to insure an orderly transition, permitted those who would become unemployed to establish priority at any other New York newspaper even while continuing to work at Fairchild." App. 97a.

E. The Philadelphia Waterfront—Another Common Pool.

This description of the nature of employment in the New York City newspaper industry assumed critical importance in the comparison drawn by the District Court and the Second Circuit with the employment situation on the Philadelphia waterfront, a situation that was the subject of the Third Circuit's allegedly

conflicting decision in *Bey* v. *Muldoon*, 354 F.2d 1005 (3rd Cir. 1966).[6]

In *Bey*, a trust fund had been established for the purpose of compensating longshoremen who had lost work as a result of automation, and it was held that such benefits could be paid to all affected longshoremen on the Philadelphia waterfront, even those whose employers had never contributed to the fund. Out of the 15 to 18 stevedoring companies on that waterfront, only one (Jarka Corp.) had installed automated sugar unloading equipment and Jarka alone had contributed to the trust fund. As a result of Jarka's actions in this respect, "the number of men regularly employed [by Jarka] was reduced from 133 to less than 60." 223 F. Supp. at 490.

The court found that Jarka's installation of automated equipment could also affect employment opportunities with the other stevedoring companies, there being a "ripple effect" from an automated displacement of a Jarka longshoreman. And because the mobility of longshoremen in shifting their employment from one stevedoring company to another was so great and so repeated, the court rather graphically described the "realities" of stevedoring-longshoring in these terms: "a longshoreman is the employee of the waterfront and the waterfront is his employer." 223 F. Supp. at 494.

Such were the circumstances that led to the *Bey* ruling that §302 (c) (5) does not proscribe the effort to compensate the victims of automation through a

[6] The Third Circuit there affirmed, per curiam, the lower court's more elaborate opinion. *Bey* v. *Muldoon*, 223 F.Supp. 489 (E.D. Pa. 1963). This Court denied certiorari in the case. 384 U.S. 987 (1966).

trust fund to which the victims' employers may not have contributed. None of the evils that prompted Congress to enact §302 (c) (5) were found to inhere in those circumstances, and the *Bey* court concluded that in this context it was fair to consider the 15 to 18 stevedores collectively as the "employer" in applying §302 (c) (5).

The District Court below concluded, after its review of the employment situation in the New York City newspaper industry, that the situation "is hardly that of a typical waterfront 'shape-up'." The hiring of printing "substitutes" was held not to approximate "a waterfront shape-up for, under the rules of the union, substitutes can register or 'slip-up' at only one newspaper at a time" and, further, "a substitute's 'priority' for a permanent situation is determined, in part at least, by the length of his registration at a given newspaper." See p. 12a, *infra*. The court thus concluded "that substitutes are hardly the 'peripatetic workers' found in *Bey* on the Philadelphia waterfront" and that the petitioners had failed to establish "that typesetters work for every publisher and that publishers as a group should be considered as the employer in applying §302 (c) (5)." See p. 13a, *infra*. And since the proposed plan would confer benefits on typesetters whose employers may never have contributed to the Outside Tape Fund, implementation of such a plan was said to violate §302 (c) (5).

The Second Circuit agreed as to the inapplicability of the *Bey* decision, stating that

> "It suffices to point out that the result in *Bey* rested on the peculiar nature of the use of longshoremen on the Philadelphia waterfront; the

longshoremen worked for the 'waterfront' rather than for any particular stevedoring company. It is apparent from the record developed here that, unlike the Philadelphia longshoremen, the vast majority of typographical workers at the *Times* and the *Post* are employees of one newspaper employer. Thus *Bey* is not persuasive authority for the contention of appellants." See pp. 4a-5a, *infra*.

REASONS FOR GRANTING THE WRIT

1. The decision below reflects a conflict between the Second and Third Circuits as to the application and interpretation of § 302(c)(5).

The Second Circuit's resolution of the central issue in this case directly conflicts with the Third Circuit's per curiam approval (354 F.2d 1005) of the District Court's ruling (223 F.Supp. 489) in *Bey* v. *Muldoon*. And it is in light of that treatment of the issue by the Third Circuit that this Court denied certiorari in *Bey*.[7] 384 U.S. 987.

The issue that has divided these Circuits is an important one in an age of constantly advancing technology and automation. Does §302 (c) (5) of the Labor Management Relations Act outlaw the joint efforts of management and labor to provide financial

[7] The sole question presented in the petition for certiorari filed in this Court in *Bey* v. *Muldoon*, No. 1254, Oct. Term 1965, reads as follows:

"Where only one of many stevedore employers makes financial contributions to a fund created pursuant to the resolution of a labor dispute involving job reduction due to automation, does § 302(c)(5) of the Labor Management Relations Act permit an entire union membership to participate as beneficiaries of such fund without regard as to whether individual union members were ever employed by the contributing employer?

assistance to the victims of automation within a common labor pool where those victims chanced never to have worked for an employer whose automated equipment obligated him to contribute to the trust fund?

The Second Circuit has given an affirmative answer to that question. It has looked solely to the literal language of §302 (c) (5). It has ignored the legislative purposes underlying that language. And it has concluded that to permit benefits to be distributed to such a victim of automation would violate the statutory command that such a trust fund must be "for the sole and exclusive benefit of the employees of such [contributing] employer."

Contrariwise, the Third Circuit, by its approval of Judge Lord's lower court opinion, has eschewed a blindly literal approach to §302 (c) (5). It has looked to the legislative intent respecting that language and found that the restriction of benefits to "employees of such employer" was inserted in the Act solely to insure that "an employee whose hour's work required the employer to make a payment of five cents to the trust fund be assured of reaping the benefit of that payment." 223 F.Supp. at 495. Thus the employer contribution to the trust fund was conceived of by Congress as the equivalent of a part of, or as a deduction from, the wage that his employee had actually earned. And by insisting that the benefits be available only to such an employee of the contributing employer, Congress was seeking to preclude the employee's union from using the trust funds for "non-union or even general union purposes . . . [or] for the benefit of all the employees represented by the union without regard to which of the union members had earned the right to this [benefit] payment." *Ibid.*

But the employer contribution in *Bey*, as in the instant case, was not being made as a substitute for a wage for work actually performed by any employee. Rather, it was a contribution for the benefit of all workmen whose labor had been rendered unnecessary by virtue of the installation of automated equipment. And those whose work was thus rendered unnecessary were found in *Bey* not to be limited to the contributor's own employees; the impact of the automation instituted by the one employer radiated to all longshoremen on the Philadelphia waterfront. So, too, in the instant case the outside tape technique utilized by the New York Times and the New York Post had repercussions on the job opportunities of all within the common pool of typesetters in the New York City area.

The essence of the *Bey* ruling is that such a contribution, based on the amount of labor displaced by automation, is not within the purview of Congress' concern in §302 (c) (5) and that benefits can thus be paid to affected workers other than those employed by the instigator of automation. That ruling cannot be squared with the Second Circuit's decision in the instant case.

2. The decision below raises important questions of statutory construction in the context of the recurring problems of automation.

The action of the Second Circuit in reading §302 (c) (5) in its most literal sense, disregarding the legislative history and the evils that Congress sought to outlaw, raises a significant problem in statutory construction. In reading § 302 in its criminal context, this Court has warned against reading the terms thereof, such as the word "representative," in a narrow fashion that

"would substantially defeat the congressional purpose." *United States* v. *Ryan,* 350 U.S. 299, 304 (1956). And the Court has further indicated that a literal construction of the criminal aspects of § 302 may be permissible where "[a]n examination of the legislative history confirms that a literal construction of this statute does no violence to common sense." *Arroyo* v. *United States,* 359 U.S. 419, 424 (1959).

The basic question remains open whether and under what circumstances § 302(c)(5), in its civil context, should be read literally. Should that section in all situations be read literally to preclude "the extension of benefits to persons who have never been in the active employ of a contributing employer or to those who, although having been in active employment, were not covered by employer contributions"? *Blassie* v. *Kroger Company,* 345 F.2d 58, 71 (8th Cir. 1965). See also *Moglia* v. *Geoghegan,* 403 F.2d 110, 116 (2nd Cir. 1968). Or should the section be read liberally in the light of the precise congressional intent and the limited evils to be proscribed?[8] Is it consistent with the accepted principles of statutory construction to read out of §302 (c) (5) any prohibition of benefits to the victims of automation who have not been employed by the contributing employer?

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[8] In the words of Senior Judge Wyzanski's dissenting opinion below, "a careful reading of the primary and other sources by counsel and the court has not uncovered any expressions of opinion, hostile or otherwise, by Senators, Congressmen, witnesses, or others with respect to the type of plan here involved. We have no ground to suppose that, in general, Congress has been unsympathetic with pooling of employees' unemployment, pension, and like funds which treat all employees in an industry, or section thereof, as having such a common interest that they become, by their own free choice, mutual self-insurers." See p. 5a, of Appendix hereto.

The Third Circuit proceedings in *Bey* led to the use of the word "employer" as the vehicle for a liberal interpretation of § 302(c)(5) to permit benefits to be accorded the victims of automation not employed by the contributing employer. In the phrase "for the sole and exclusive benefit of the employees of such [contributing] employer," the word "employer" was construed to include the multiple employers that were said to constitute the Philadelphia "waterfront." Only one of those employers had contributed to the trust fund and it was the "employer" of about 60 permanent employees. But because of the extreme mobility of other longshoremen in moving almost daily from one employer to another it was decreed that the "waterfront"—composed of the 15 to 18 stevedoring "employers"—could be encompassed within the § 302 (c) (5) concept of a contributing "employer." All members of the common longshoremen pool were conceived to be employees of the "waterfront," only one segment of which had actually contributed to the trust fund.

In the instant proceedings, the courts below sought to distinguish the *Bey* case solely because the New York City typesetters lack the intensity of the Philadelphia longshoremen's mobility in shifting from one employer to another. It is true, of course, that typesetters do not engage in so rapid a job-change. But the difference is a matter of degree. Like the longshoremen in *Bey,* the New York City typesetters constitute a common labor pool from which the newspaper employers draw their employees; and there is a discernible amount of employment and priority changes from one newspaper to another.

But in the context of so reading the language of § 302 (c)(5) to conform to the limited objectives of Congress, should the result depend solely upon the degree of employment mobility? If Congress truly intended not to prohibit benefits to victims of automation within a common labor pool, why should the term "employer" be construed to include the group of employers drawing on that pool only if the pool is so fluid that employees constantly change jobs? Should it not be enough that there is a common pool for multiple employers to draw from, and that there is a degree and certainly a potential of employment mobility? The differences that obviously do exist between the Philadelphia "waterfront" and the New York City newspaper industry are of more significance than merely distinguishing the factual situation in the *Bey* case. They are differences that in themselves deserve consideration by this Court in evaluating the statutory interpretation problem at hand.

Moreover, the *Bey* solution to the statutory problem may not be the only possible one, given the propriety of the conclusion that Congress did not mean to outlaw benefits to automation victims in a common labor pool. It might be possible to interpret the word "employee," rather than "employer," to meet this situation. As this Court observed in *Labor Board* v. *Hearst Publications,* 322 U.S. 111, 124 (1944), in many situations the term "employee," like that of "employer," is not a word of art but rather "takes color from its surroundings . . . [in] the statute in which it appears" and "derives meaning from the context of that statute, which 'must be read in the light of the mischief to be corrected and the end to be attained.'" The term "employee," in other words, should be "determined

broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications." *Ibid.*, at 129.

In other statutory contexts, the term "employee" has been construed to include applicants for work. *Phelps Dodge Corp.* v. *Labor Board,* 313 U.S. 177 (1941). Indeed, in construing the word "employee" in § 302(c)(5), Mr. Justice (then Judge) Blackmun on behalf of the Eighth Circuit has ruled that the "reasons for the statute, and its purposes" justify reaching beyond an "employee" currently employed, as the word literally means, to encompass retired or inactive employees, since "[b]enefits after retirement are not an evil at which the statute was directed." *Blassie* v. *Kroger Company,* 345 F.2d 58, 69 (8th Cir. 1969).[9]

Thus it would be possible to construe the term "employee" in § 302 (c) (5) to include potential employees that a contributing employer might draw from a common and mobile labor market, since benefits to such potential employees who suffer from the ravages of automation instituted by a contributing employer "are not an evil to which the statute was directed." Whether such a construction is a legitimate one, of course, is a part of the question presented to this Court in this petition.

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[9] In *Crawford* v. *Cianciulli*, 83 LRRM 2228, 2236 (E.D.Pa., 1973), it was held that one can be the beneficiary of a § 302(c)(5) trust "so long as he was, during any period of time otherwise covered by the trust agreement, an employee of a currently contributing employer." Under that interpretation, he may receive benefits even though his last employment was by a currently non-contributing employer.

Ultimately, whatever the vehicle for liberally construing § 302(c)(5), the question here raised is that put by Senior Judge Wyzanski in his dissent below (p. 6a of Appendix hereto):

> "Thus the question is whether to disregard the letter of the statute, and to hold it inapplicable because the challenged conduct is not within the reason of the statute. This raises a familiar issue. Theoretically little can be added to the classic authorities on the subject. *United States* v. *Carbone,* 327 U.S. 633; see *Holy Trinity Church* v. *United States,* 143 U.S. 457. *Lynch* v. *Overholser,* 369 U.S. 705, 710.
>
> "In my view those authorities point to the desirability in this case of disregarding the letter of the prohibition and allowing the parties to carry out their agreement to which, so far as we are informed, there is no objection founded on declared or undeclared, discoverable or undiscoverable, alleged or implied, public policy."

It need only be added that the problem of construing § 302 (c) (5) in light of joint efforts to ameliorate the ill effects of automation is an important and recurring one in the national economy. See Report on Automation by the President's Advisory Committee on Labor Management Policy (G.P.O., Jan. 11, 1962). One of the major efforts to meet the impact of job displacement by automation has been the creation of joint trust funds, providing financial assistance to the displaced worker until he can find other employment. Many such funds are to be found in the longshoring, the construction and the printing industry, all of which

are marked by multiple employer-contributors and large common labor pools.[10]

This Court's consideration of the meaning of § 302 (c)(5) in this context of automation, with particular reference to the terms "employer" and "employee" and the benefits that can be paid, will have a marked effect on the development and stability of these funds. A definitive resolution of these statutory problems is needed in order to assist in the amelioration of the hardship visited on labor by increased automation.

CONCLUSION

For these various reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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[10] This Court has noted that such multiple employers frequently engage in joint bargaining "in industries like longshoring and building construction, where workers change employers from day to day or week to week." *Labor Board* v. *Truck Drivers Union*, 353 U.S. 87, 94 (1957).